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6-21-16
10:23 AM

GK1/ek4 6/21/2016

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

O1 Communications, Inc. (U6065C),

Complainant,

v.

New Cingular Wireless PCS, LLC (U3060C)
and AT&T Mobility Wireless Operations
Holdings, Inc. (U3021C)

Defendants.

Case 15-12-020
(Filed December 28, 2015)

ADMINISTRATIVE LAW JUDGE'S RULING ON MOTION TO COMPEL

This ruling denies in part and grants in part the motion to compel responses to data requests filed by New Cingular Wireless and AT&T Mobility Wireless Operations Holdings.

1. Background

On December 28, 2015, O1 Communications, Inc. (U606-C) (O1 Communications) filed a complaint against New Cingular Wireless PCS, LLC (U-3060-C) (New Cingular Wireless) and AT&T Mobility Wireless Operations Holdings, Incorporated (U-3021-C) (AT&T Mobility Wireless).¹

In its complaint, O1 Communications requests the following relief:

1) prohibit AT&T Mobility from disconnecting the direct connection trunks

¹ New Cingular Wireless and AT&T Mobility Operations Holdings will be jointly referred to as AT&T Mobility for the remainder of this Ruling.

between AT&T Mobility's network and O1 Communications' network; 2) require AT&T Mobility to interconnect with O1 Communications on terms and conditions no less favorable to O1 Communications than the terms and conditions that AT&T Mobility offers to its affiliates and/or other carriers for the delivery of transit and terminating traffic to AT&T Mobility; 3) award O1 Communications restitution to the extent O1 Communications incurs excess costs to route traffic to AT&T Mobility through a third party after AT&T Mobility disconnected the direct connection between AT&T Mobility's network and O1 Communications' network; and 4) issue appropriate fines and penalties against AT&T Mobility if the Commission finds any unlawful conduct or violation of Commission orders.

2. The Motion to Compel

On March 21, 2016, AT&T Mobility served its First Set of Data Requests (First Set) on O1 Communications. O1 Communications provided objections to various requests set forth in the First Set on March 28, 2016. O1 Communications and AT&T Mobility attempted to resolve the discovery dispute through meet and confer efforts. Unable to reach an agreement during these meet and confer efforts, AT&T Mobility filed its motion to compel on April 26, 2016. O1 Communications filed its response to the motion to compel on May 9, 2016.

3. Discussion

Rule 10.1 of the Commission's Rules of Practice and Procedure provides in relevant part that "... any party may obtain discovery from any other party regarding any matter, not privileged, that is relevant to the subject matter involved in the pending proceeding, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence, unless the burden, expense, or intrusiveness of that discovery clearly

outweighs the likelihood that the information sought will lead to the discovery of admissible evidence.”

3.1. Data Request Numbers 1-3, 1-4 and 1-8

AT&T Mobility requests the following information² from O1 Communications in data request numbers 1-3, 1-4 and 1-8:

AT&T Mobility Data Request No. 1-3:

Please provide a list of those entities that you identify as O1’s “Platinum Customers.” For each “Platinum Customer” identified, please:

- a. Provide the name, business address, and Utility Identification Number.
- b. Indicate whether the “Platinum Customer” is an End-User Customer of O1 or if the customer purchases Transit Services from O1, or both.
- c. Provide all documents that indicate the customer is a “Platinum Customer.”
- d. Support your contention that the customer will not allow their traffic to be carried through Indirect Interconnection due to quality considerations.
- e. Provide the total number of MOUs carried by O1 to AT&T Mobility on behalf of the “Platinum Customer” for each month during the period from January 2014 through December 2015.
- f. Provide the total MOUs carried by O1 to AT&T Mobility through Direct Interconnection for each month during the period from January 2014 through December 2015.

² All data requests which AT&T Mobility propounded on O1 Communications is contained in Attachment A of the Declaration of Margaret M. Thomson in support of AT&T Mobility’s motion to compel.

AT&T Mobility Data Request No. 1-4:

Please provide a list of O1 customers that you contend “require direct connection facilities [and who] will not allow their traffic to be carried through indirect connections due to quality considerations” as stated by Anita Taff-Rice at the hearing concerning O1’s Temporary Restraining Order against AT&T Mobility on January 29, 2016. (TRO Hearing Transcript, p. 4, lines 23-26.) For each such customer, please:

- a. Provide the name, business address, and Utility Identification Number.
- b. Indicate whether the customer is an End-User customer of O1, or if the customer purchases Transit Services from O1, or both.
- c. Provide all documents that support your contention that the customer “requires direct connection...due to quality considerations.”
- d. Provide the total number of MOUs carried by O1 to AT&T Mobility on behalf of the customer for each month during the period from January 2014 through December 2015.
- e. Provide the total number of MOUs carried by O1 to AT&T Mobility via Direct Interconnection on behalf of the customer for each month during the period from January 2014 through December 2015.
- f. Provide the total number of MOUs carried by O1 to Carriers other than AT&T Mobility on behalf of the customer for each month during the period from January 2014 through December 2015.
- g. Provide the number of MOUs carried by O1 to Carriers other than AT&T Mobility via Direct Interconnection on behalf of the customer for each month during the period from January 2014 through December 2015.

AT&T Mobility Data Request No. 1-8:

If O1 contends it has lost revenue from any O1 customer because of O1's alleged inability to establish or maintain Direct Interconnection with AT&T Mobility, please provide a list of those customers.

O1 Communications objects to these data requests on the grounds that the request to provide identifying customer information seeks highly confidential trade secret information and that AT&T Mobility's request for detailed customer data violates the Customer Proprietary Network Information (CPNI) rules set forth in 47 U.S.C. § 222.³ O1 Communications has stated that it will provide anonymized information for its customers.⁴

AT&T Mobility has failed to establish why it is necessary for O1 Communications to provide identifying customer information. Accordingly, AT&T Mobility's motion to compel identifying information in data requests 1-3, 1-4 and 1-8 is denied. O1 Communications shall provide responses to data request numbers 1-3, 1-4 and 1-8 that is either redacted or anonymized.

3.2. Data Request Number 1-12

AT&T Mobility requests the following information from O1 Communications in data request number 1-12:

AT&T Mobility Data Request No. 1-12:

At Paragraph 31 of the Complaint, O1 states that it "provides local exchange and long distance voice services to retail customers in the State of California."

- a. Please provide a list of the services offered by O1 to its "retail customers" and/or End Users during the period January 2014 through December 2015.

³ O1 Communications' response to AT&T Mobility's motion to compel at 7.

⁴ O1 Communications' response to AT&T Mobility's motion to compel at 7.

- b. For each service identified, please indicate the number of customers purchasing the service for each month during the period January 2014 through December 2015.
- c. For each month during the period January 2014 through December 2015, please indicate the percentage of traffic terminating to AT&T Mobility End-Users via Direct Interconnection that originated with O1 “retail customers.”

O1 Communications objects to this data request on the grounds that the information requested is available on its retail website and that additional customer-specific information is sensitive, confidential trade secret information.⁵

To the extent that AT&T Mobility’s request seeks any customer-specific information that is sensitive or confidential trade secret information, O1 Communications can remedy this by providing responses that are either redacted or anonymized to remove identifying customer information. Additionally, O1 Communications and AT&T Mobility have executed a nondisclosure agreement (NDA). Furthermore, O1 Communications may file a motion to file its responses under seal.

O1 Communications should have the information requested in this data request readily available. AT&T Mobility’s request is reasonable and may lead to the discovery of admissible evidence. O1 Communications fails to establish how providing an anonymized listing of the number of customers purchasing a specific service during the period of January 2014 through December 2015 would be disclosure of sensitive or confidential trade secret information. The same applies to AT&T Mobility’s data request 1-12(c).

⁵ O1 Communications’ response to AT&T Mobility’s motion to compel at 11.

3.3. Data Request Numbers 1-14 and 1-15

AT&T Mobility requests the following information from O1 Communications in data request numbers 1-14 and 1-15:

AT&T Mobility Data Request No. 1-14:

At Paragraphs 32-33 of the Complaint, O1 indicates that it provides “interconnection and transport services” and “originating, transit and termination services” to other Carriers. For each month during the period January 2014 through December 2015, please indicate the percentage of traffic originating with Carriers other than O1 that terminated to AT&T Mobility End-Users via Direct Interconnection between O1 and AT&T Mobility.

AT&T Mobility Data Request No. 1-15:

Please provide all documents that support your response to Data Request No. 1-14.

O1 Communications objects to this data request on the grounds that the information requested is burdensome, irrelevant and proprietary.⁶

AT&T Mobility’s request is reasonable and may lead to the discovery of admissible evidence. To the extent that AT&T Mobility’s request seeks any customer-specific information, O1 Communications can remedy this by providing responses that are either redacted or anonymized to remove customer specific information. Furthermore, O1 Communications and AT&T Mobility have entered into a NDA and O1 Communications may file a motion to provide said responses under seal.

⁶ O1 Communications’ response to AT&T Mobility’s motion to compel at 12.

3.4. Data Request Numbers 1-16, 1-17 and 1-18

AT&T Mobility requests the following information from O1 Communications in data request numbers 1-16, 1-17 and 1-18:

AT&T Mobility Data Request No. 1-16:

Identify all Carriers with which O1 currently exchanges traffic through Indirect Interconnection.

AT&T Mobility Data Request No. 1-17:

Identify all Carriers with which O1 currently exchanges traffic through Direct Interconnection.

AT&T Mobility Data Request No. 1-18:

Please produce any and all agreements relating to Interconnection that you have with the entities identified in your responses to Data Request No. 1-16 and Data Request No. 1-17 that O1 contends fall within the jurisdiction and/or authority of the California Public Utilities Commission.

O1 Communications objects to these data requests on the grounds that the information requested is overbroad, burdensome, outside the scope of the Scoping Ruling, and will not lead to discovery of admissible evidence, and that such information is proprietary, confidential, commercially sensitive, trade secrets and subject to confidentiality agreements.⁷

O1 Communications has failed to establish how providing redacted or anonymized responses to data request numbers 1-16 and 1-17 is overbroad or burdensome. Additionally, O1 Communications fails to establish how providing anonymized responses or responses which redact all customer identifying information would result in disclosure of proprietary, confidential, commercially

⁷ O1 Communications' response to AT&T Mobility's motion to compel at 12-13.

sensitive or trade secret information. O1 Communications shall respond to data request numbers 1-16 and 1-17 with anonymized or redacted responses that removes specific customer identifying information.

AT&T Mobility has failed to establish how data request 1-18 is relevant to this proceeding. The agreements reached between O1 Communications and other telecommunication providers are a result of contractual agreements reached between O1 Communications and the other parties. Additionally, AT&T Mobility has failed to establish that the information requested in data request 1-18 will lead to the discovery of admissible evidence. Accordingly, AT&T Mobility's request to compel responses to data request number 1-18 is denied.

4. Conclusion

AT&T Mobility's motion to compel responses to its First Set of Data Requests is denied in part and granted in part. O1 Communications shall provide responses to data request numbers 1-3, 1-4, 1-8, 1-12, 1-14, 1-15, 1-16 and 1-17 which are redacted or anonymized to remove customer identifying information. AT&T Mobility's motion to compel responses to number 1-18 is denied.

IT IS THEREFORE RULED that:

1. New Cingular Wireless PCS, LLC and AT&T Mobility Wireless Operations Holdings, Inc.'s Motion to Compel Discovery Responses to Data Requests Numbers 1-3, 1-4, 1-8, 1-12, 1-14, 1-15, 1-16 and 1-17 is Granted.
2. O1 Communications, Inc. shall provide responses to Data Requests numbers 1-3, 1-4, 1-8, 1-12, 1-14, 1-15, 1-16 and 1-17 which are redacted or anonymized to remove customer identifying information.

3. New Cingular Wireless PCS, LLC and AT&T Mobility Wireless Operations Holdings, Inc.'s Motion to Compel Discovery Responses to Data Request 1-18 is denied.

Dated June 21, 2016, at San Francisco, California.

/s/ GERALD F. KELLY
Gerald F. Kelly
Administrative Law Judge